

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 29, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH S.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:20-cv-05075-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 20, 21

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 20, 21. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 20, and grants Defendant's motion, ECF No. 21.

3 JURISDICTION

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

5 STANDARD OF REVIEW

6 A district court's review of a final decision of the Commissioner of Social
7 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
8 limited; the Commissioner's decision will be disturbed "only if it is not supported
9 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
10 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
11 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
12 (quotation and citation omitted). Stated differently, substantial evidence equates to
13 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
14 citation omitted). In determining whether the standard has been satisfied, a
15 reviewing court must consider the entire record as a whole rather than searching
16 for supporting evidence in isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its
18 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
19 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one
20 rational interpretation, [the court] must uphold the ALJ's findings if they are

1 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
2 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
3 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
4 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
5 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
6 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
7 *Sanders*, 556 U.S. 396, 409-10 (2009).

8 **FIVE-STEP EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered “disabled” within
10 the meaning of the Social Security Act. First, the claimant must be “unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
15 “of such severity that he is not only unable to do his previous work[,] but cannot,
16 considering his age, education, and work experience, engage in any other kind of
17 substantial gainful work which exists in the national economy.” 42 U.S.C. §
18 423(d)(2)(A).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §

1 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's
2 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
3 "substantial gainful activity," the Commissioner must find that the claimant is not
4 disabled. 20 C.F.R. § 404.1520(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
8 from "any impairment or combination of impairments which significantly limits
9 [his or her] physical or mental ability to do basic work activities," the analysis
10 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant's impairment
11 does not satisfy this severity threshold, however, the Commissioner must find that
12 the claimant is not disabled. *Id.*

13 At step three, the Commissioner compares the claimant's impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §
16 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
17 enumerated impairments, the Commissioner must find the claimant disabled and
18 award benefits. 20 C.F.R. § 404.1520(d).

19 If the severity of the claimant's impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity (RFC),
2 defined generally as the claimant's ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
4 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
8 capable of performing past relevant work, the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
10 performing such work, the analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
14 must also consider vocational factors such as the claimant's age, education, and
15 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
17 404.1520(g)(1). If the claimant is not capable of adjusting to other work, analysis
18 concludes with a finding that the claimant is disabled and is therefore entitled to
19 benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
4 capable of performing other work; and 2) such work “exists in significant numbers
5 in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d
6 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On February 14, 2017 Plaintiff applied for Title II disability insurance
9 benefits alleging a disability onset date of January 24, 2011.² Tr. 16, 69, 181-82.
10 The application was denied initially and on reconsideration. Tr. 94-100, 102-08.
11 Plaintiff requested a hearing after the deadline, and his request for a hearing was
12 dismissed on January 25, 2018. Tr. 82-86. Plaintiff appealed the dismissal, and on
13 September 14, 2018, the Appeals Council remanded the case for a hearing. Tr. 87-
14

15 _____
16 ² Plaintiff previously applied for benefits on May 2, 2011, which resulted in an
17 initial denial; Plaintiff did not appeal the decision. Tr. 59. Plaintiff again applied
18 for benefits on July 24, 2013, which resulted in denials on initial and
19 reconsideration; Plaintiff requested a hearing but then withdrew the request for
20 hearing, resulting in a March 13, 2015 order of dismissal. Tr. 57, 59.

1 90. Plaintiff appeared before an administrative law judge (ALJ) on March 13,
2 2019. Tr. 36-53. On April 19, 2019, the ALJ denied Plaintiff's claim. Tr. 13-33.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff,
4 who met the insured status requirements through September 30, 2016, has not
5 engaged in substantial gainful activity since January 24, 2011. Tr. 18-19. At step
6 two, the ALJ found that Plaintiff had the following severe impairments: status post
7 bilateral carpal tunnel releases in 2011 and left cubital tunnel release in 2015, and
8 mild osteoarthritis in the bilateral thumbs. Tr. 19.

9 At step three, the ALJ found Plaintiff did not have an impairment or
10 combination of impairments that met or medically equaled the severity of a listed
11 impairment. Tr. 20. The ALJ then concluded that Plaintiff had the RFC to
12 perform light work with the following limitations:

13 [Plaintiff could] frequently climb stairs and ramps, balance, stoop, kneel,
14 crouch, or crawl, and never climb ropes, ladders, or scaffolds. He [could]
15 occasionally finger and handle with his non-dominate left hand. He should
16 avoid concentrated exposure to extreme cold, industrial vibrations and
17 hazards.

18 Tr. 20.

19 At step four, the ALJ found Plaintiff was unable to perform any of his past
20 relevant work. Tr. 26. At step five, the ALJ found that, considering Plaintiff's
age, education, work experience, RFC, and testimony from the vocational expert,
there were jobs that existed in significant numbers in the national economy that

1 Plaintiff could perform, such as usher, counter clerk, sandwich board carrier, and
2 call out operator. Tr. 27. Therefore, the ALJ concluded Plaintiff was not under a
3 disability, as defined in the Social Security Act, from the alleged onset date of
4 January 24, 2011, through the date last insured. Tr. 28.

5 On March 11, 2020, the Appeals Council denied review of the ALJ's
6 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
7 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

8 ISSUES

9 Plaintiff seeks judicial review of the Commissioner's final decision denying
10 him disability insurance benefits under Title II of the Social Security Act. Plaintiff
11 raises the following issues for review:

- 12 1. Whether the ALJ properly evaluated the medical opinion evidence;
- 13 2. Whether the ALJ conducted a proper step-two analysis;
- 14 3. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 15 4. Whether the ALJ conducted a proper step-five analysis.

16 ECF No. 20 at 6.

17 DISCUSSION

18 A. Medical Opinion Evidence

19 Plaintiff contends the ALJ erred in her consideration of the opinion of
20 Robert Smiley, M.D. ECF No. 20 at 8-10.

1 There are three types of physicians: “(1) those who treat the claimant
2 (treating physicians); (2) those who examine but do not treat the claimant
3 (examining physicians); and (3) those who neither examine nor treat the claimant
4 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
5 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
6 Generally, a treating physician’s opinion carries more weight than an examining
7 physician’s, and an examining physician’s opinion carries more weight than a
8 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight
9 to opinions that are explained than to those that are not, and to the opinions of
10 specialists concerning matters relating to their specialty over that of
11 nonspecialists.” *Id.* (citations omitted).

12 If a treating or examining physician’s opinion is uncontradicted, the ALJ
13 may reject it only by offering “clear and convincing reasons that are supported by
14 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
15 “However, the ALJ need not accept the opinion of any physician, including a
16 treating physician, if that opinion is brief, conclusory and inadequately supported
17 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
18 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
19 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
20 may only reject it by providing specific and legitimate reasons that are supported

1 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
2 F.3d 821, 830-31 (9th Cir. 1995)). The opinion of a nonexamining physician may
3 serve as substantial evidence if it is supported by other independent evidence in the
4 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

5 Dr. Smiley testified at Plaintiff’s hearing and rendered an opinion on
6 Plaintiff’s functioning. Tr. 38-43. Dr. Smiley diagnosed Plaintiff with bilateral
7 carpal tunnel status post release in 2012, cubital tunnel syndrome status post 2015
8 release, and noted Plaintiff has complained of chronic pain and there are notes of
9 somatoform-related problems. Tr. 40-42. Dr. Smiley opined that during the time
10 prior to the date last insured, Plaintiff should have been able to function at the light
11 level, and he would have only been able to do things with his left hand on an
12 occasional basis. Tr. 43. Dr. Smiley also testified that he knows he is not
13 supposed to testify regarding Plaintiff’s somatoform problems, but he suspects
14 Plaintiff would have had “an awful lot of days where he couldn’t or wouldn’t
15 work” because of his “chronic pain and somatoform problems.” *Id.* The ALJ gave
16 Dr. Smiley’s opinion significant weight. Tr. 24. As Dr. Smiley is a non-
17 examining source, the ALJ must consider the opinion and whether it is consistent
18 with other independent evidence in the record. *See* 20 C.F.R. § 404.1527(b),(c)(1);
19 *Tonapetyan v. Holter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Lester*, 81 F.3d at 830-
20 31.

1 Plaintiff argues the ALJ erred in rejecting Dr. Smiley's opinion that Plaintiff
2 would miss work. ECF No. 20 at 9. However, Dr. Smiley opined that based on
3 the objective evidence, Plaintiff should have been able to function at the light level.
4 Tr. 42-43. Dr. Smiley stated, "I suspect" Plaintiff would have had a lot of days
5 where he "couldn't or wouldn't" work, due to his somatoform problems and
6 chronic pain. Tr. 43. Dr. Smiley's statement indicated he only suspected Plaintiff
7 would have missed work, and it indicates the objective evidence does not support
8 his suspicion. *See* Tr. 42-43. Dr. Smiley also did not state how many days he
9 thought Plaintiff would have been unable to work, versus how many days he was
10 simply unwilling to work.

11 Further, the ALJ gave supported reasons why he found the diagnoses of
12 somatoform disorder and chronic pain syndrome were not severe impairments.
13 The ALJ found Plaintiff has no more than mild limitations due to any
14 psychological conditions, and thus found Plaintiff's psychological conditions,
15 including somatoform disorder, non-severe. Tr. 19. Plaintiff argues the ALJ failed
16 to address Plaintiff's somatoform disorder, ECF No. 20 at 10, however the ALJ
17 addressed it and the finding was supported by substantial evidence, as discussed
18 *infra*. Additionally, the ALJ found Dr. Smiley's diagnosis of chronic pain
19 syndrome was not supported by the evidence. Tr. 25. Plaintiff does not challenge
20 the ALJ's finding regarding chronic pain syndrome. As the ALJ's finding that

1 Plaintiff's somatoform disorder and chronic pain syndrome are not severe
2 impairments is supported by substantial evidence, the ALJ reasonably rejected Dr.
3 Smiley's opinion that Plaintiff would have missed work due to those conditions.

4 The ALJ reasonably interpreted Dr. Smiley's opinion as supporting a light
5 RFC with additional limitations. Further, any error in rejecting Dr. Smiley's
6 opinion would be harmless as Dr. Smiley stated he only suspected Plaintiff would
7 have missed work, and did not specify how many days of work Plaintiff would
8 have missed due to an inability to work. *See Molina*, 674 F.3d at 1115.

9 **B. Step Two**

10 Plaintiff contends the ALJ erred in failing to find Plaintiff's somatoform
11 symptom disorder is a severe impairment at step two. ECF No. 20 at 10-12.

12 At step two of the sequential process, the ALJ must determine whether the
13 claimant suffers from a "severe" impairment, i.e., one that significantly limits his
14 physical or mental ability to do basic work activities. 20 C.F.R. § 404.1505.

15 When a claimant alleges a severe mental impairment, the ALJ must follow a two-
16 step "special technique" at steps two and three. 20 C.F.R. § 404.1520a. First, the
17 ALJ must evaluate the claimant's "pertinent symptoms, signs, and laboratory
18 findings to determine whether [he or she has] a medically determinable
19 impairment." 20 C.F.R. § 404.1520a(b)(1). Second, the ALJ must assess and rate
20 the "degree of functional limitation resulting from [the claimant's] impairments" in

1 four broad areas of functioning: understand, remember, or apply information;
2 interact with others; concentrate, persist, or maintain pace; and adapt or manage
3 oneself. 20 C.F.R. § 404.1520a(b)(2)-(c)(4). Functional limitation is measured as
4 “none, mild, moderate, marked, and extreme.” 20 C.F.R. § 404.1520a(c)(4). If
5 limitation is found to be “none” or “mild,” the impairment is generally considered
6 to not be severe. 20 C.F.R. § 404.1520a(d)(1). If the impairment is severe, the
7 ALJ proceeds to determine whether the impairment meets or is equivalent in
8 severity to a listed mental disorder. 20 C.F.R. § 404.1520a(d)(2)-(3).

9 Step two is “a de minimus screening device [used] to dispose of groundless
10 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “Thus, applying
11 our normal standard of review to the requirements of step two, [the Court] must
12 determine whether the ALJ had substantial evidence to find that the medical
13 evidence clearly established that [Plaintiff] did not have a medically severe
14 impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687
15 (9th Cir. 2005).

16 The ALJ found Plaintiff’s somatoform symptom disorder is not a severe
17 impairment. Tr. 19. Plaintiff contends the ALJ failed to mention Plaintiff’s
18 somatoform symptom disorder, ECF No. 20 at 11, ECF No. 22 at 3, 6, however the
19 ALJ explicitly addressed the condition, *see* Tr. 19. The ALJ considered the four
20 broad areas of functioning and determined Plaintiff’s psychological conditions

1 cause no more than mild limitations. *Id.* The ALJ relied on the opinion of the
2 State agency consultant, Dr. Kraft, who opined Plaintiff has only mild limitations
3 in understanding, remembering, or applying information, interacting with others,
4 and concentrating, persisting, or maintaining pace, and no limitations in adapting
5 or managing oneself. *Id.* (citing Tr. 74). Dr. Kraft's opinion is consistent with the
6 other State agency consultant's opinion. Tr. 62. The ALJ also found Dr. Kraft's
7 opinion is consistent with Plaintiff not seeking any mental health treatment, and
8 Plaintiff generally having normal mental status examinations. Tr. 19.

9 The ALJ's finding is also supported by the opinions of examining sources.
10 While Plaintiff contends the ALJ ignored Dr. Friedman's examination findings,
11 ECF No. 22 at 3, the ALJ considered the opinion of Dr. Friedman, who performed
12 a psychiatric independent medical examination in May 2015. Tr. 24. Dr.
13 Friedman diagnosed Plaintiff with somatic symptom disorder, and opined there is
14 no reason Plaintiff could not be gainfully opined. *Id.* (citing Tr. 356-57). While
15 Plaintiff argues Dr. Friedman's examination supports the argument that the
16 condition is a severe impairment, ECF No. 20 at 12, Dr. Friedman found Plaintiff
17 has no psychological limitations, which supports a finding the condition is not
18 severe. Dr. Genthe also performed a psychological examination of Plaintiff in
19 2013. Tr. 324-28. Dr. Genthe did not diagnose Plaintiff with somatoform
20 symptom disorder, and opined Plaintiff does not have any limitations due to

1 psychological conditions. Tr. 25 (citing Tr. 327-28). The ALJ's finding that
2 somatoform symptom disorder is not a severe impairment is supported by
3 substantial evidence.

4 Further, any error in finding the condition non-severe would be harmless.
5 Plaintiff does not point to any limitations caused by somatoform symptom disorder
6 that were not already incorporated in the RFC. Plaintiff points only to Dr.
7 Smiley's opinion that Plaintiff may have missed work, ECF No. 20 at 12, however
8 the ALJ rejection of Dr. Smiley's opinion is supported by substantial evidence, as
9 discussed *supra*. Additionally, the ALJ took Plaintiff's somatoform symptom
10 disorder into consideration when crafting the RFC, as the ALJ included limitations
11 "over and above what was supported by his physical condition." Tr. 24-26. As
12 such, any error is harmless. *See Molina*, 674 F.3d at 1115.

13 **C. Plaintiff's Symptom Claims**

14 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
15 convincing in discrediting his symptom claims. ECF No. 20 at 12-17. An ALJ
16 engages in a two-step analysis to determine whether to discount a claimant's
17 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
18 "First, the ALJ must determine whether there is objective medical evidence of an
19 underlying impairment which could reasonably be expected to produce the pain or
20 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).

1 “The claimant is not required to show that [the claimant’s] impairment could
2 reasonably be expected to cause the severity of the symptom [the claimant] has
3 alleged; [the claimant] need only show that it could reasonably have caused some
4 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

5 Second, “[i]f the claimant meets the first test and there is no evidence of
6 malingering, the ALJ can only reject the claimant’s testimony about the severity of
7 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
8 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
9 omitted). General findings are insufficient; rather, the ALJ must identify what
10 symptom claims are being discounted and what evidence undermines these claims.
11 *Id.* (quoting *Lester*, 81 F.3d at 834; *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th
12 Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant’s
13 symptom claims)). “The clear and convincing [evidence] standard is the most
14 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
15 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
16 924 (9th Cir. 2002)).

17 Factors to be considered in evaluating the intensity, persistence, and limiting
18 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
19 duration, frequency, and intensity of pain or other symptoms; 3) factors that
20 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and

1 side effects of any medication an individual takes or has taken to alleviate pain or
2 other symptoms; 5) treatment, other than medication, an individual receives or has
3 received for relief of pain or other symptoms; 6) any measures other than treatment
4 an individual uses or has used to relieve pain or other symptoms; and 7) any other
5 factors concerning an individual's functional limitations and restrictions due to
6 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
7 404.1529(c). The ALJ is instructed to "consider all of the evidence in an
8 individual's record," to "determine how symptoms limit ability to perform work-
9 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

10 The ALJ found that Plaintiff's medically determinable impairments could
11 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
12 statements concerning the intensity, persistence, and limiting effects of his
13 symptoms were not entirely consistent with the evidence. Tr. 22.

14 *1. Inconsistent Objective Medical Evidence*

15 The ALJ found the objective medical evidence is inconsistent with
16 Plaintiff's symptom claims. Tr. 22-24. An ALJ may not discredit a claimant's
17 symptom testimony and deny benefits solely because the degree of the symptoms
18 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
19 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
20 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400

1 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
2 relevant factor, along with the medical source's information about the claimant's
3 pain or other symptoms, in determining the severity of a claimant's symptoms and
4 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

5 Here, the ALJ found that Plaintiff's reported physical symptoms and
6 limitations are not consistent with the objective evidence. Tr. 22-24. The ALJ
7 considered the generally normal examination findings, and multiple opinions from
8 examining providers who opined Plaintiff did not have any limitations due to his
9 physical impairments, and stated Plaintiff could return to work or pursue typing
10 and school activities. Tr. 22, 271-90, 298, 318-19, 334-49, 376, 380. Plaintiff's
11 EMG showed only mild to moderate ulnar nerve palsy, and he then underwent a
12 nerve decompression. Tr. 24 (citing Tr. 379, 442). The ALJ also noted that when
13 Plaintiff was establishing care at a new clinic in December 2014, he did not
14 mention any issues with his hands. Tr. 24 (citing Tr. 627).

15 The ALJ also found Plaintiff's reported psychological symptoms and
16 limitations are not consistent with the objective evidence. Tr. 24. Plaintiff's May
17 2015 psychiatric examination was generally normal, and the provider opined
18 Plaintiff had no limitations due to any psychological symptoms. Tr. 24 (citing Tr.
19 350-67). Plaintiff also did not pursue mental health treatment, and his mental
20 status was generally noted as normal. Tr. 19 (citing Tr. 407, 472, 474, 476).

1 Plaintiff offers an alternative interpretation of the evidence, ECF No. 20 at
2 13-15, however, the ALJ's finding that the objective findings were out of
3 proportion with and did not corroborate Plaintiff's report of severe physical and
4 psychological restrictions is reasonable. This was a clear and convincing reason,
5 along with the other reason offered, to discount Plaintiff's symptom reports.

6 *2. Activities of Daily Living*

7 The ALJ found Plaintiff's activities of daily living were inconsistent with his
8 symptom claims. Tr. 24. The ALJ may consider a claimant's activities that
9 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
10 substantial part of the day engaged in pursuits involving the performance of
11 exertional or non-exertional functions, the ALJ may find these activities
12 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
13 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
14 be eligible for benefits, the ALJ may discount a claimant's symptom claims when
15 the claimant reports participation in everyday activities indicating capacities that
16 are transferable to a work setting" or when activities "contradict claims of a totally
17 debilitating impairment." *Molina*, 674 F.3d at 1112-13. Additionally, the ability
18 to care for others without help has been considered an activity that may undermine
19 claims of totally disabling pain. *Rollins*, 261 F.3d at 857. However, if the care
20 activities are to serve as a basis for the ALJ to discredit the Plaintiff's symptom

1 claims, the record must identify the nature, scope, and duration of the care
2 involved and this care must be “hands on” rather than a “one-off” care activity.
3 *Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017).

4 Plaintiff argues his activities of daily living are not inconsistent with his
5 claims, ECF No. 20 at 15, however Plaintiff reported significant limitations, such
6 as an inability to walk further than one block before needing to rest for a minute,
7 and an inability to pay attention for longer than 10 minutes, Tr. 227, and he
8 reported difficulties using his hands for more than a couple minutes before needing
9 to rest his hands for an hour, Tr. 21 (citing Tr. 266). These statements are
10 inconsistent with Plaintiff’s reported ability to drive, handle his personal care,
11 grocery shop one to two times per week, mow the lawn, bicycle, independently
12 handle household tasks including laundry, dishes, vacuuming, dusting, cooking,
13 and yardwork, and provide care for his young child. Tr. 24, 222-28, 300, 326, 330,
14 636. While the ALJ did not obtain specific information about the nature, duration,
15 and scope of Plaintiff’s childcare activities, Plaintiff repeatedly explained he
16 spends his days providing care for a toddler. Any error in the ALJ’s consideration
17 of Plaintiff’s childcare activities would be harmless, as the ALJ articulated other
18 activities inconsistent with his symptom complaints. *See Molina*, 674 F.3d at
19 1115.

1 **D. Step Five**

2 Plaintiff contends the ALJ erred at step five because the vocational
3 testimony was based on an incomplete hypothetical. ECF No. 20 at 17. At step
4 five of the sequential evaluation analysis, the burden shifts to the Commissioner to
5 establish that 1) the claimant can perform other work, and 2) such work “exists in
6 significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2);
7 *Beltran*, 700 F.3d at 389. In assessing whether there is work available, the ALJ
8 must rely on complete hypotheticals posed to a vocational expert. *Nguyen v.*
9 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ’s hypothetical must be
10 based on medical assumptions supported by substantial evidence in the record that
11 reflects all of the claimant’s limitations. *Osenbrook v. Apfel*, 240 F.3d 1157, 1165
12 (9th Cir. 2001). The hypothetical should be “accurate, detailed, and supported by
13 the medical record.” *Tackett*, 180 F.3d at 1101.

14 The hypothetical that ultimately serves as the basis for the ALJ’s
15 determination, i.e., the hypothetical that is predicated on the ALJ’s final RFC
16 assessment, must account for all the limitations and restrictions of the claimant.
17 *Bray*, 554 F.3d at 1228. As discussed above, the ALJ’s RFC need only include
18 those limitations found credible and supported by substantial evidence. *Bayliss*,
19 427 F.3d at 1217 (“The hypothetical that the ALJ posed to the VE contained all of
20 the limitations that the ALJ found credible and supported by substantial evidence

1 in the record.”). “If an ALJ’s hypothetical does not reflect all of the claimant’s
2 limitations, then the expert’s testimony has no evidentiary value to support a
3 finding that the claimant can perform jobs in the national economy.” *Id.* However,
4 the ALJ “is free to accept or reject restrictions in a hypothetical question that are
5 not supported by substantial evidence.” *Greger v. Barnhart*, 464 F.3d 968, 973
6 (9th Cir. 2006). Therefore, the ALJ is not bound to accept as true the restrictions
7 presented in a hypothetical question propounded by a claimant’s counsel if they are
8 not supported by substantial evidence. *Magallanes v. Bowen*, 881 F.2d 747, 756-
9 57 (9th Cir. 1989); *Martinez v. Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). A
10 claimant fails to establish that a step five determination is flawed by simply
11 restating argument that the ALJ improperly discounted certain evidence, when the
12 record demonstrates the evidence was properly rejected. *Stubbs-Danielson v.*
13 *Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2006).

14 Plaintiff’s argument is based entirely on the assumption that the ALJ erred in
15 considering Plaintiff’s severe impairments, the opinion evidence, and Plaintiff’s
16 symptom claims. For the reasons discussed throughout this decision, the ALJ’s
17 consideration of Plaintiff’s severe impairments, the opinion evidence, and
18 Plaintiff’s symptom claims was legally sufficient and supported by substantial
19 evidence. Thus, the ALJ did not err in assessing the RFC or finding Plaintiff
20 capable of performing work existing in the national economy.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ's findings, the Court concludes the
3 ALJ's decision is supported by substantial evidence and free of harmful legal error.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, **ECF No. 20**, is **DENIED**.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 21**, is **GRANTED**.

7 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

8 The District Court Executive is directed to file this Order, provide copies to
9 counsel, and **CLOSE THE FILE**.

10 DATED March 29, 2021.

11 s/Mary K. Dimke

12 MARY K. DIMKE

13 UNITED STATES MAGISTRATE JUDGE
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